(3)

IN THE HONOURABLE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR

Criminal Appeal No. 403 / 2001.

(Criminal Appeal U/S 374 (2) of Cr. P. C. 1973)

Appellant	:	Jaylal S/0 Parau Kalar, aged about 30 years, R/o Village: Brehbeda, P.S. Chhote Dongar, Dist: Jagadalpur (Bastar), Chhattisgarh.
Versus		
Respondent	:	State of Chhattisgarh through Police Station: Chhote Dongar, Dist: Bastar.

Appeal against the judgment dated 28.02.2001 passed by the Court of Special Judge/ Addl. Sessions Judge, Bastar at Jagdalpur, in Sessions Trial Case no. 50/2000.

Field on 30-4-2001 by Shri D.K. Tiwari Advocate

(8017)

R. to AR

It is most respectfully submitted on behalf of the petitioner as under:

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR. A. 403/01 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 403/2001

Appellant : **Jaylal**

Versus

Respondent : **State of Chhattisgarh.**

Mr. Rajnish Shrivastav advocate on behalf of Mr. Shailendra Dubey counsel for the appellant.
Mr. D.K. Gwalare, Dy. GA for the respondent/State.

JUDGMENT
(4.12.2006)

Per L.C. Bhadoo, J

The appellant has preferred this Criminal Appeal under section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 28.2.2001 passed by Special Judge/Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 50/2000 whereby he has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and pay fine of Rs. 500/-, in default of payment of fine to further undergo R.I. one year.

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आदेश पत्रक (पूर्वानुबद्ध)

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2. Case of the prosecution in brief is that on 4.10.1999 PW-1 Lachhandei, wife of the deceased lodged a report Ex. P-2 in police station Chhotedongar to the effect that on the festival of Navakhani she along with her husband went to the house of Jailal where he gave his two months old son to her, on which she jokingly said that why he was giving the black complexioned boy to her which was not liked by Jailal. On this, accused started quarreling with her and said that why she called his son black complexioned, on which her husband replied that why he had called them at his residence on the occasion of Navakhani and asked his wife to get back. This was also not liked by the accused and therefore he attacked her husband with axe as a result of which he received injuries on his head and face and succumbed to the same. Receiving this information offence was registered under section 302 of the IPC against the accused/appellant. Investigating Officer left for the scene of occurrence, conducted inquest on the body of Sukhdeo and prepared inquest report Ex. P-3. Weapon of offence i.e. axe was seized under Ex. P-5. Plain soil and blood stained soil was taken into possession from the place of occurrence under Ex. P-4, cloths of the accused were seized under Ex. P-6. Body of Sukhdeo was sent to Primary Health Centre, Orchha for

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आदेश पत्रक (पूर्वानुबद्ध)

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post mortem examination where Dr. R.D. Bokade PW-4 conducted the post mortem examination of the body of Sukhdeo and prepared the post mortem report Ex. P-7 in which he opined that the death was due to head injury caused by sharp and heavy object like axe and nature of death was homicidal.

3. After completion of investigation the charge sheet was filed in the Court of Judicial Magistrate First Class Narainpur who in turn committed the case to the Court of Sessions Judge, Bastar, from where learned Special Judge/Additional Sessions Judge, Bastar received the same on transfer for trial.

4. Prosecution in order to establish the charge against the accused/appellant examined six witnesses. Statement of the accused/appellant was also recorded under section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence and pleaded his innocence and false implication in the case.

5. Learned Special Judge after hearing counsel for the respective parties convicted and sentenced the accused as mentioned above.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. We have heard Mr. Rajnish Shrivastav advocate on behalf of Mr. Shailendra Dubey for the appellant and Mr. D.K. Gwalare, Dy. GA for the respondent/State.

7. Mr. Shrivastava has not disputed the homicidal nature of death of Sukhdeo. That apart, from the ocular evidence of PW-1 Lachhandei, wife of the deceased who witnessed the crime in question and the medical evidence of Dr. R. D. Bokade PW-4 in which he has stated that there were three cut wounds on the face and head of Sukhdeo as a result of which frontal bone was fractured, it is established that death of Sukhdeo was homicidal in nature.

8. As far as involvement of the accused in crime in question is concerned, PW-1 Lachhandei, mother in law of the accused and wife of the deceased has stated that on the fateful day she along with her husband Sukhdeo went to the house of the accused Jailal on his invitation on the occasion Navakhani festival. At that time her husband was roasting maize on which accused Jailal asked her husband as to why he was roasting the maize and for that reason Sukhdeo got angry, and when he was leaving the house of the accused, accused snatched the axe of Sukhdeo and attacked him on his head for seven times. She tried to

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आदेश पत्रक (पूर्वानुबद्ध)

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intervene but the accused threatened to kill her also as a result of which Sukhdeo succumbed to the injuries sustained by him. PW-2 Kishan who is the son of the deceased has stated in his evidence that on the invitation of the accused he went to his house on the festival of Navakhani but after taking meal he returned to his house and thereafter, his mother came and informed him about the incident that the accused assaulted Sukhdeo with axe and thereafter he along with his mother went to the police station and lodged the report. He has further stated that the axe was taken into possession under Ex. P-5 on being produced by accused Jailal. PW-3 Ayatu has stated in his evidence that on the fateful day he also went to the house of accused, they consumed liquor together; deceased Sukhdeo and Lachhandei were also there inside the house. Daughter of Sukhdeo and wife of accused namely Hiro was also in the house and after some time Lachhadei came out of the house and informed that accused attacked Sukhdeo with axe. Thereafter, he went inside and saw that Sukhdeo was lying in an injured condition and blood was oozing from the injuries. Therefore, from the evidence of PW-3, the evidence of eyewitness Lachhandei PW-1 stands corroborated. Their evidence is further corroborated by the medical evidence of Dr. R.D. Bokade PW-4 who has

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stated that he conducted the post mortem examination on the body of deceased Sukhdeo and found one incised wound in the size of 6 inch x ½ c.m. as a result of which nasal bone and chief bone was fractured, another incised wound over the right eye in the size of 3 inch x ½ c.m., yet another incised wound below injury No.2 in the size of 2 inch x ½ c.m. He has further stated that nasal bone, frontal bone and forehead bone were fractured; therefore, the evidence of this witness corroborates the evidence of eyewitness PW-1 Lachhandei. In the cross examination of these witnesses the defence has not been able to elicit anything which discredits the evidence of the prosecution witnesses. Moreover, the accused is the son in law of the deceased and PW-1 Lachhandei, therefore, there was no reason to implicate him in a false case, moreover the body of the deceased was found near the house of the accused and in these circumstances, we are of the considered opinion that the findings recorded by the trial Court convicting the accused under section 302 of the IPC do not suffer from any illegality or infirmity.

9. In the result, the appeal being devoid of any substance is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.